

1992

# State of Utah v. Donald Wayne Butcher : Brief of Appellant

Utah Court of Appeals

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Paul Van Dam; Attorney General; Attorney for Respondent.

Michael D. Murphy; Attorney for Appellant.

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## Recommended Citation

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UTAH

DEPARTMENT

OF THE

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.A10

DOCKET NO.

920252

IN THE UTAH COURT OF APPEALS

STATE OF UTAH,

:

Plaintiff-Respondent,

:

v.

:

Case No.

92-0252-CA

DONALD WAYNE BUTCHER,

:

Defendant-Appellant,

:

Priority No. 2

BRIEF OF APPELLANT, DONALD WAYNE BUTCHER

ON APPEAL from a conviction in the Second Judicial District Court, Davis County,

State of Utah, the Honorable Douglas L. Cornaby, District Judge, presiding.

APPEARANCES

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FILED

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COURT OF APPEALS

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**STATEMENT OF ISSUES PRESENTED ON APPEAL**

1. Was there sufficient evidence to support the burglary conviction?

**IN THE UTAH COURT OF APPEALS**

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STATE OF UTAH,	:	
Plaintiff-Respondent,	:	
v.	:	Case No.
DONALD WAYNE BUTCHER,	:	
Defendant-Appellant,	:	

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**BRIEF OF APPELLANT, DONALD WAYNE BUTCHER**

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**STATEMENT OF JURISDICTION**

This appeal is taken pursuant to U.C.A. § 78-2A-3(2)(f) in which Defendant-Appellant appeals his conviction from the Second Judicial District Court, Davis County, State of Utah.

**NATURE OF PROCEEDINGS**

This is an appeal drafted pursuant to State v. Clayton, 638 P.2d 168 (Utah 1981) from a criminal conviction in which Defendant-Appellant was convicted at a bench trial, a felony of the Second Degree, which was entered in the Second Judicial District Court, Davis County, State of Utah.



STATE OF UTAH

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DEC 3 1992

December 3, 1992

Ms. Noonan  
Clerk of the Court  
Utah Court of Appeals

Mary Noonan, Esq.  
Clerk of the Court  
Utah Court of Appeals  
230 South 500 East, #400  
Salt Lake City, Utah 84102

Re: State v. Butcher, Case no. 920252-CA

Dear Ms. Noonan:

As an addendum to the state's brief, filed December 2, 1992 I would like to submit the following information, pursuant to rule 24(j) of the Utah Rules of Appellate Procedure.

Defense counsel filed an Anders brief in this case which complies substantially with the requirements outlined in State v. Clayton, 639 P.2d 168 (Utah 1981). The State agrees that defendant's appeal is wholly frivolous and can see no reason why defense counsel's motion to withdraw should not be granted and defendant's conviction affirmed.

Very truly yours,

Joanne C. Slotnik  
Assistant Attorney General  
Criminal Appeals Division

**STATEMENT OF ISSUES PRESENTED FOR APPEAL  
AND DETERMINATIVE AUTHORITY**

1. Was there sufficient evidence to support the burglary conviction?

"In making the determination as to whether there is sufficient evidence to uphold a conviction, an appellate court does not sit as a second fact finder . . . rather, the function of a reviewing court is limited to insuring that there is sufficient, competent evidence to find beyond a reasonable doubt that the defendant committed the crime."

State v. Warden, 813 P.2d 1146, 1150 (Utah 1991).

An appeal court:

will not disturb the factual findings of the trial court unless such findings are clearly erroneous . . . However, conclusions of law arising from those factual determinations are reviewed under a correction of error standard.

State v. Kitchen, 808 P.2d 1127, 1129 (Utah App. 1991). See also State v. Gabaldon, 735 P.2d 410 (Utah App. 1987).

**STATEMENT OF THE CASE**

Defendant-Appellant was charged with burglary, a felony in the second degree, in violation of U.C.A. § 76-2-202. On December 30, 1991, a bench trial was conducted before the Honorable Douglas L. Cornaby. Judge Cornaby found the defendant guilty and ordered a sixty-day evaluation. After reviewing the diagnostic report, the Court, on March 17, 1992, sentenced the defendant to serve one to fifteen years in the Utah State Prison.



### **STATEMENT OF FACTS**

On October 10, 1991 at approximately 11:45 a.m., Vicki Lynn Bradshaw was talking on her home phone when an individual, later identified as Donald Butcher, walked up to the back sliding glass doors of her residence and peeked in. (Trial Transcript 3, 4.) Mrs. Bradshaw hung up the phone, hid behind a couch, and called 991. (Trial Transcript 21, 22). While talking to police on the phone, Vicki Bradshaw observed the defendant step into her home and shut the door. (Trial Transcript 25).

At this moment, the police arrived and Donald Butcher left the home, jumped a fence surrounding the Bradshaw property, and ran to a neighboring pasture. (Trial Transcript 25-29).

Butcher was soon apprehended by law enforcement officials. (Trial Transcript 43). Butcher told police that he had a drug and alcohol problem, that he was in the Bradshaw backyard looking for water, and that he "might have been looking for alcohol." (Trial Transcript 47). Police recovered a water bottle which belonged to the defendant. (Trial Transcript 48). At trial, Mr. Butcher called no witnesses to testify on his behalf. (Trial Transcript 1-51).

### **SUMMARY OF ARGUMENT**

There is insufficient evidence to support the trial court's finding that the Defendant committed the crime of burglary.

## ARGUMENT

The defendant asked his appeal counsel to argue that there is insufficient, competent evidence to support the trial court's guilty verdict. As previously noted,

. . . the function of a reviewing court is limited to insuring that there is sufficient, competent evidence to find beyond a reasonable doubt that the defendant committed the crime.

State v. Warden, 813 P.2d 1146, 1150 (Utah 1991).

An appeal court:

will not disturb the factual findings of the trial court unless such findings are clearly erroneous . . . However, conclusions of law arising from those factual determinations are reviewed under a correction of error standard.

State v. Kitchen, 808 P.2d 1127, 1129 (Utah App. 1991). See also State v. Gabaldon, 735 P.2d 410 (Utah App. 1987).

The trial court, at the conclusion of the trial, made the following finding:

"It appears clear from the testimony given before the Court that on October 10, 1991 at Woods Cross, at the home of Vicki Bradshaw, 1017 West 1050 South in Woods Cross, that the defendant in the courtroom having been identified, did, in fact, enter that residence. One of the elements of the offense is that it be done with the intent to commit a theft or commit some other crime. This particular one alleges with an intent to commit theft.

He indicated to the officer that he entered for the purpose of getting water. It's been testified that there were water taps on the outside; also that he had a water bottle. Plaintiff's Exhibit 2, half full of water at the time. A gallon jug half full of water. If he had water, or course, he already had a half gallon of water. If he wanted more, he could have filled it up from the outside.

And so the Court cannot find that there was any other purpose in entering the residence, he having apparently satisfactorily assured himself that there was no one inside the residence, since Vicki Bradshaw was concealing herself from where he could see her. So his purpose in going in was to commit a theft of some kind.

That the officers arrived before he could commit a theft. Clearly, he's guilty of burglary, a felony of the second degree. The Court will so find."

Trial Transcript 51-52.

The Court erred when it concluded that Butcher entered the Bradshaw home to commit a theft. Butcher took nothing from the Bradshaw residence. Butcher never denied he went into the residence. (Trial Transcript 47). Butcher had a drug and alcohol problem and had been drunk for the last month. (Trial Transcript 47).

The State failed in its burden to show sufficient, competent evidence that showed beyond a reasonable doubt that Butcher entered the house with an intent to commit theft. The Court erred in finding that Butcher entered the Bradshaw home to commit a theft.

### CONCLUSION

There is insufficient evidence to support the trial court's finding that the defendant committed the crime of burglary.

Respectfully submitted this \_\_\_\_ day of October, 1992.

---

Michael D. Murphy

### **CERTIFICATE OF HAND DELIVERY**

I, Michael D. Murphy, hereby certify that I hand delivered four true and correct copies of the foregoing Brief of Defendant-Appellant to the:

Criminal Appeals Division  
Utah Attorney General  
236 State Capitol  
Salt Lake City, UT

this \_\_\_\_ day of October, 1992.

\_\_\_\_\_  
Michael D. Murphy

### **CERTIFICATE OF SERVICE**

I certify that I have thoroughly reviewed the file and have read the transcripts and that I have raised the points/issues requested by the defendant in this brief, and that on the \_\_\_\_ day of October, 1992, I mailed, postage prepaid, a true and correct copy of the above brief and a copy of the transcript to Donald Butcher at the following address:

Donald Butcher  
Utah State Prison  
P.O. Box 250  
Draper, UT 84020

\_\_\_\_\_  
Michael D. Murphy